

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
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January 15, 2020

BY ECF

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

RE: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn,

Plaintiffs write the Court to formally object to the FBI's untimely and improper classified privilege log, filed in violation of Local Civil Rule 26.2(b), which provides that a privilege log "shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the Court."

Today, the FBI sent Plaintiffs a revised privilege log (attached Exhibit 1) which for the first time stated (in Log No. 21) that the FBI has withheld documents from production without listing them on a privilege log. The log entry states that the FBI will submit "a classified privilege log describing such record(s) separately to the Court." Furthermore, yesterday, the FBI advised Plaintiffs for the first time via email that it would not produce any of the phone call records it collected for the third main subject.

No order of this Court allows the FBI to furnish a classified privilege log. The FBI was required to file a motion for such an order "at the time of the response to such discovery," Local Rule 26(b)(2), on or before July 12, 2019, the date this Court set for the FBI's production of its "final tranche of core records." ECF No. 4524. The FBI and DOJ must follow the same procedural rules as the parties in this case.

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As this Court is aware, Plaintiffs demanded the production of documents concerning the third main subject in their April 2018 subpoena, and the issue has been repeatedly raised before this Court, including at hearings in May 2019 and November 2019. At the November hearing, Plaintiffs specifically raised with the Court and the DOJ the FBI's failure without explanation to produce any of the underlying factual documents (including phone records) concerning the third main subject.

The FBI's delay and obstruction has severely prejudiced the Plaintiffs and prevented them from obtaining key fact evidence needed for the upcoming depositions on the critical matter of the third main subject who tasked Fahad al-Thumairy and Omar al-Bayoumi. Plaintiffs do not believe that the FBI has a proper basis to deny production of fact evidence (such as phone records) about a declassified criminal subject and events which occurred 20 years ago.

Respectfully submitted,

KREINDLER & KREINDLER, LLP

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*On behalf of the MDL 1570 Plaintiffs' Exec.
Committee for Personal Injury and Death
Claims*

*On behalf of the MDL 1570 Plaintiffs' Exec.
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cc: Hon. George B. Daniels
All Counsel of Record